

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

LISA CORSON,

Plaintiff,

Index No.

-against-

1:16-cv-00545-AKH-DCF

BROWN HARRIS STEVENS OF THE HAMPTONS, LLC,
Defendant.

- - - - -x

Duane Morris, LLP
1540 Broadway, Suite 1400
New York, New York 10036

November 3, 2016
1:20 p.m.

EXAMINATION BEFORE TRIAL of ERIK
DAVIDOWICZ, the Witness appearing on behalf of
the Defendant herein, held at the
above-mentioned time and place, pursuant to
Court Order, before Ilysa A. Linzer, a Notary
Public in and for the State of New York.

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A P P E A R A N C E S:

DUANE MORRIS, LLP
Attorneys for Plaintiff
1540 Broadway, Suite 1400
New York, New York 10036
BY: KEVIN P. POTERE, ESQ.

LAW OFFICES OF ANDREW P. SAULITIS
Attorneys for Defendant
40 Wall Street, 37th Floor
New York, New York 10005
BY: ANDREW P. SAULITIS, ESQ.

1

2 E R I K D A V I D O W I C Z,

3 the Witness appearing on behalf of the
4 Defendant herein, having been duly sworn
5 by the Notary Public, was examined and
6 testified as follows:

7 EXAMINATION BY

8 MR. POTERE:

9 Q. State your name for the record,
10 please.

11 A. Erik Davidowicz.

12 Q. State your address for the record,
13 please.

14 A. 27 Main Street, East Hampton, New
15 York 11937.

16 MR. SAULITIS: The
17 transcript may be sworn to before
18 any officer authorized to
19 administer oaths. And request
20 will be made for a copy of the
21 transcript to be provided to the
22 Witness pursuant to the procedures
23 in Federal Rule of Civil
24 Procedures 30. I normally say
25 that at the end, but I will say it

1 E. DAVIDOWICZ

2 coordinator.

3 Q. Okay. What were your primary
4 responsibilities as advertising coordinator?

5 A. Planning and organizing print ads
6 mostly, catalogs, web advertising, and working
7 with the president of the company directly.

8 Q. All right. So did your position
9 change after that company was acquired?

10 A. It actually -- yes, but not
11 immediately. The company was growing, and so
12 the responsibilities grew as well.

13 Q. So how long would you say you had
14 your first position for with those --

15 A. About three years.

16 Q. Okay. And then what did your
17 position grow into?

18 A. Director of advertising.

19 Q. And that was for the new entity,
20 Brown Harris?

21 A. Yes.

22 Q. As director of advertising, what
23 were your new responsibilities?

24 A. They were primarily the same just
25 enhanced really. We were growing as a company,

1 E. DAVIDOWICZ

2 Q. So let's back up a second. So you
3 did gather documents to respond to some of these
4 topics?

5 A. Yes.

6 Q. What documents did you gather to
7 respond to these topics?

8 A. Google Analytics reports.

9 Q. Which you mentioned earlier?

10 A. Right.

11 Q. Any other documents besides that?

12 A. No.

13 Q. Did you speak to anyone in regards
14 to any of these topics, other than your Counsel,
15 to be able to address these topics?

16 A. No.

17 Q. All right.

18 MR. POTERE: This is going
19 to be a two part exhibit,
20 Exhibit 2 and 3. Actually, there
21 are going to be three documents,
22 so it will be extra confusing for
23 you.

24 Exhibit 2 is going to be a
25 Wall Street Journal article

1 E. DAVIDOWICZ

2 entitled, "the Race to the 100
3 Million Spec House."

4 (Whereupon, Wall Street
5 Journal article "the Race to the
6 100 Million Spec House," was
7 marked as Davidowicz Exhibit 2 for
8 identification, as of this date.)

9 MR. POTERE: Exhibit 2A is
10 just an enlargement of this
11 article. I will represent on the
12 record that it is the exact same
13 document just re-photocopied to
14 make it bigger so that the Witness
15 can actually read it.

16 (Whereupon, enlargement of
17 Exhibit 2 was marked as Davidowicz
18 Exhibit 2A for identification, as
19 of this date.)

20 MR. POTERE: Exhibit 3 --
21 actually, can we go back to
22 Exhibit 2, it is Bates stamped LOC
23 00041 and LOC 00040. It is in
24 reverse order.

25 Exhibit 3 is Bates stamped

1 E. DAVIDOWICZ

2 DDP 000005 and it is a blog post
3 from the Brown Harris Stevens
4 website. It has the same title,
5 "the Race to the 100 Million Spec
6 House."

7 (Whereupon, blog post from
8 the Brown Harris Stevens website
9 was marked as Davidowicz Exhibit 3
10 for identification, as of this
11 date.)

12 Q. Does that make sense, this is just
13 an enlargement?

14 A. Yes.

15 Q. And this is Exhibit 3. I will give
16 your Counsel a copy of everything, and if you
17 can take a moment to familiarize yourself with
18 those documents.

19 A. (Perusing.)

20 Q. For Exhibit 1, maybe put it face
21 down here.

22 A. This one?

23 Q. Here. To keep ourselves from going
24 crazy with all of the exhibits.

25 A. Okay.

1 E. DAVIDOWICZ

2 Q. Have you had an opportunity to look
3 at these documents?

4 A. Yes.

5 Q. Have you seen these documents
6 before?

7 A. I've seen the original.

8 Q. Let's go through each one
9 individually. Exhibit 2, the Wall Street
10 Journal article, have you seen that document
11 before?

12 A. Yes, the article I have seen.

13 MR. SAULITIS: Let's make
14 this -- because it may be unclear
15 to the reader of the transcript.
16 What I understand Exhibit 2A to be
17 is a reprint of a print edition of
18 an article.

19 MR. POTERE: It is actually
20 just the exhibit, Exhibit 2
21 enlarged.

22 MR. SAULITIS: And
23 Exhibit 2, which is headed:
24 "Mansion" something, it appears to
25 be from a print edition of the

1 E. DAVIDOWICZ

2 Wall Street Journal.

3 MR. POTERE: We produced
4 the document. I don't know the
5 origin of it. It is a Wall Street
6 Journal article.

7 MR. SAULITIS: Yeah,
8 because what --

9 THE WITNESS: It does look
10 like a print edition.

11 MR. SAULITIS: Yeah, what I
12 just -- because we are going to
13 lead to confusion, my
14 understanding is that whatever the
15 original -- whatever the Witness
16 looked at and saw was online.

17 MR. POTERE: I understand.

18 MR. SAULITIS: And I think
19 the purpose of showing this was to
20 be able to assist to read the
21 article because the one that is
22 screen print of what was online
23 contains very small type.

24 MR. POTERE: There is
25 another purpose as well.

1 E. DAVIDOWICZ

2 MR. SAULITIS: So be

3 careful because if you haven't

4 physically seen the print edition,

5 unless you say something like

6 that, the reader will think you

7 read it, the article, and this was

8 something that you read or

9 whatever, so be careful to, you

10 know, differentiate between what

11 you actually experienced versus

12 what has been put in front of you.

13 THE WITNESS: Okay.

14 Q. Let me ask a couple of questions.

15 Have you seen the print edition of this article

16 before?

17 A. No, I have not.

18 Q. Have you seen an electronic version

19 of this article before?

20 A. Yes.

21 Q. To the best of your recollection, is

22 the print version you are looking at now similar

23 to the online version that you originally saw?

24 MR. SAULITIS: Objection to

25 form.

1 E. DAVIDOWICZ

2 MR. POTERE: That's fine.

3 A. It has been quite a long time, but
4 to the best of my recollection, yes, it is
5 similar, obviously the content.

6 Q. Approximately when was the first
7 time you saw the article in online form?

8 A. I believe it was the day that it was
9 published, which was March 20th of 2015.

10 Q. And so you -- did you receive an
11 e-mail that contained the document, or were you
12 looking online and you saw it online somewhere?

13 MR. SAULITIS: Objection to
14 form.

15 A. I was looking online, reading the
16 Wall Street Journal.

17 Q. So you first saw it on the Wall
18 Street Journal's website; is that correct?

19 A. That's correct.

20 Q. You believe you saw it the day the
21 article was posted to the Wall Street Journal
22 website?

23 A. To the best of my recollection I
24 believe.

25 Q. Okay. So looking at Exhibit 2 and

1 E. DAVIDOWICZ

2 Exhibit 2A, and then looking over at Exhibit 3,
3 I know it is a little confusing, would you say
4 that the contents of the Wall Street Journal
5 article were what you used to create the blog
6 post that is represented as Exhibit 3?

7 MR. SAULITIS: Objection to
8 form.

9 A. Yes, the blog post was directly
10 based on the Wall Street Journal article, that
11 was what was done.

12 Q. And so who was responsible for
13 copying the Wall Street Journal article?

14 A. I was.

15 Q. Okay. When approximately did you
16 copy the article?

17 A. I believe it was the same day when I
18 read the article.

19 Q. Okay. How did you copy the article
20 to create the Brown Harris blog post?

21 A. Simply by using electronic copy and
22 paste tools.

23 Q. Okay. And so who at Brown Harris
24 gave you permission to copy the article?

25 MR. SAULITIS: Objection to

1 E. DAVIDOWICZ

2 form.

3 A. I made the decision to do so.

4 Q. Have you copied similar articles in
5 the past to create blog posts on the Brown
6 Harris website?

7 A. Yes.

8 Q. And have you ever spoken to a
9 superior about this practice of copying articles
10 and posting them into the Brown Harris website?

11 MR. SAULITIS: Objection to
12 form.

13 A. I don't think there were any
14 specific conversations about the exact process
15 of doing it, but we have had had discussions
16 about maintaining the blog, and putting content
17 into it.

18 Q. Did you contact anyone at the Wall
19 Street Journal to gain permission to copy the
20 article?

21 A. No, I did not.

22 Q. Did you review the Wall Street
23 Journal's licensing policies before copying the
24 article?

25 A. No, I did not.

1 E. DAVIDOWICZ

2 Q. Did Brown Harris pay anything to the
3 Wall Street Journal for use of the article?

4 A. Not to my knowledge.

5 Q. Were other Wall Street Journal
6 articles used by Brown Harris to create blog
7 posts?

8 A. That I don't know. I don't recall.
9 It is possible, but I couldn't say for
10 certainty without reviewing all of the blog
11 items in the past.

12 Q. Can you take a look specifically at
13 Exhibit 3.

14 A. Mm-hmm.

15 Q. So who selected the photograph that
16 was used in the blog post that's represented in
17 Exhibit 3?

18 MR. SAULITIS: Objection to
19 form.

20 A. I made that selection.

21 Q. How did you make that selection?

22 A. That I couldn't really say. It has
23 been quite a while. I believe I was looking
24 for an appropriate image to go with the blog
25 item.

1 E. DAVIDOWICZ

2 Q. Understand.

3 A. Why that particular one was
4 selected, aside from maybe catching my eye, I
5 couldn't say for sure.

6 Q. Now, here is where the magnifying
7 glass may come into play. If you turn the page
8 of both Exhibit 2 and Exhibit 2A, I will
9 represent that there are basically four lines
10 going horizontally of photographs, and the
11 fourth line has four individual pictures in it.
12 Do you see that?

13 A. Yes, I do.

14 Q. Do you see the second picture in
15 that row of four pictures?

16 A. I do.

17 Q. And is that the same picture that
18 was copied and pasted into the Brown Harris blog
19 post in Exhibit 3?

20 MR. SAULITIS: Objection to
21 form.

22 A. It certainly looks like it is the
23 same photo.

24 Q. Okay. If you look at that same row,
25 and feel free to use the magnifying glass, can

1 E. DAVIDOWICZ

2 you see that there is a credit, a photographer
3 credit running up the side of the photographs?

4 A. Yes, I can.

5 Q. I don't know if you are able to make
6 out, can you make out the name that's associated
7 with that?

8 A. Looks like Lisa Corson for the Wall
9 Street Journal, then there is a number in
10 parentheses.

11 Q. Can you take another look at
12 Exhibit 3, the photograph incorporated into the
13 blog post?

14 A. Yes.

15 Q. Do you see any photograph credit for
16 Lisa Corson in the blog post?

17 A. No.

18 Q. What was the reason for leaving out
19 the photography credit in the blog post?

20 MR. SAULITIS: Objection to
21 form.

22 A. The structure of the blog, the way
23 it was created didn't have a space basically
24 for such a credit, it wasn't designed for those
25 purposes.

1 E. DAVIDOWICZ

2 Q. When you say "the structure of the
3 blog," do you mean the computer program you were
4 using to generate the blog?

5 A. Correct.

6 Q. What was the name of that computer
7 program?

8 A. I don't know. I am not the web
9 developer. It was developed by an outside
10 consultant who works for the company.

11 Q. Okay. Were any steps taken to
12 contact Lisa Corson to gain permission to use
13 the photograph in question?

14 A. No.

15 Q. Were any of the other photographers
16 whose photographs were used in the Wall Street
17 Journal article represented in Exhibit 2
18 contacted about their photographs for use in the
19 blog post?

20 A. No.

21 Q. Did Brown Harris Stevens believe
22 that copying Ms. Corson's photograph without her
23 permission infringed upon her copyright?

24 MR. SAULITIS: Objection to
25 form.

1 E. DAVIDOWICZ

2 A. I couldn't say what Brown Harris
3 Stevens as a corporation, I couldn't say.

4 Q. But you understand that you are here
5 today as a witness representing the corporation;
6 right?

7 MR. SAULITIS: He's not
8 here to represent anyone's mind.

9 MR. POTERE: Actually, I am
10 going to ask him the question.
11 Please don't interrupt.

12 MR. SAULITIS: Your
13 question was misleading, Counsel.

14 MR. POTERE: You can object
15 to the form, but he can answer the
16 questions.

17 MR. SAULITIS: Objection to
18 form.

19 Q. Do you understand the question or
20 would you liked it repeated back to you?

21 A. I understand.

22 Q. So as a 30C(b)(6) Witness
23 representing Brown Harris Stevens, did you
24 believe that copying Ms. Corson's photograph
25 without her permission infringed upon her

1 E. DAVIDOWICZ

2 copyright?

3 MR. SAULITIS: Objection.

4 He's not a 30(b)(6) witness as to
5 the operation of the mind of
6 anyone but himself, let me be
7 clear on that. None of the topics
8 in the 30(b)(6) notice requested a
9 witness on any of the mental
10 processes of the individuals
11 within the organization. So he's
12 not here to attest to any of those
13 things, and I am specifically
14 excluding that from any
15 designation that may be applicable
16 to this Witness. You may ask him
17 his own mental processes, but no
18 answer he gives in that regard is
19 going to be deemed testimony on
20 behalf of anyone but himself.

21 MR. POTERE: Okay. So your
22 objection is noted for the record.

23 Q. Did you understand the question?

24 A. Yes.

25 Q. Can you answer it, please?

1 E. DAVIDOWICZ

2 A. I don't believe that I felt that
3 there was any copyright infringement at the
4 time. We were linking directly to the original
5 source of the article with the blog, and by
6 doing so I believed that that was adequate at
7 the time.

8 Q. So because he objected to my
9 original question, which was as a 30(b)(6)
10 witness, and you answered "I," let me ask the
11 question again, but asking you individually, and
12 you can answer the question again however you
13 like.

14 So you personally as an individual,
15 the person that selected the photograph, did you
16 believe that you were violating Ms. Corson's
17 copyright by copying and pasting it into the
18 blog?

19 A. No, I did not believe that.

20 Q. Okay. Why did you not believe that?

21 MR. SAULITIS: Objection to
22 form.

23 A. My understanding, again at the time,
24 was because I was being faithful to the
25 original content of the article, and not

1 E. DAVIDOWICZ

2 recreating it, or paraphrasing, and providing a
3 link directly to the original source of the
4 article, and crediting the source of the
5 article that that was adequate.

6 Q. Did you believe that you personally
7 infringed upon anyone's intellectual property by
8 copying the picture and posting it into the
9 blog?

10 A. No, I did not.

11 Q. So when was the photograph first
12 displayed on the Brown Harris blog?

13 A. I believe, I can't say for certain,
14 but I believe it was the same date, March 20,
15 2015.

16 Q. Okay.

17 A. I don't think there would have been
18 any time lag.

19 Q. Where was the photograph stored
20 after it was copied and pasted into the blog?

21 MR. SAULITIS: Objection to
22 form. To avoid -- when you say
23 "the photograph," is that -- do
24 you mean separately from the
25 article, or -- I am confused, and

1 E. DAVIDOWICZ

2 perhaps the reader would be, too.

3 Are you talking about the article
4 that contained that photograph?

5 Do you understand my confusion? I
6 don't know if the Witness shares
7 that, he can say so.

8 Q. Let's take a step back. You copied
9 the article from the Wall Street Journal online
10 source, and pasted it somehow into the Brown
11 Harris Stevens blog; is that correct?

12 A. That is correct.

13 Q. When you first copied the article,
14 where did you -- did you paste it directly into
15 the blog, or did you save it somewhere else on
16 the Brown Harris Stevens server?

17 A. The text of the article, the words
18 themselves were copied and pasted directly into
19 the blog itself. The photograph is handled
20 differently, it can't be copied and pasted.

21 Q. So how is a photograph handled?

22 A. The photograph was stored on my
23 local hard drive of my work computer
24 temporarily so I can then upload it into the
25 blog through an image uploader.

1 E. DAVIDOWICZ

2 Q. I understand. So I -- through my
3 own experience I know when I save a picture off
4 the Internet I usually right click on the
5 photograph and do save as. Did you do a similar
6 process to copy the image from the online source
7 on to your local server?

8 A. I believe that's how it was done.

9 Q. Then the photograph, once it was on
10 your local server, was then uploaded onto the
11 blog post using the proprietary software that
12 was developed for Brown Harris Stevens; correct?

13 A. Correct.

14 Q. Is the photograph still saved
15 locally on your hard drive?

16 A. No, it is not.

17 Q. To your knowledge, is the photograph
18 stored anywhere on the Brown Harris Stevens
19 servers?

20 A. Not to my knowledge, I don't believe
21 so.

22 Q. As a 30C(b)(6) Witness, do you know
23 whether the photograph is stored anywhere on the
24 Brown Harris Stevens server?

25 MR. SAULITIS: Objection to

1 E. DAVIDOWICZ

2 form.

3 A. I don't believe so. From my
4 knowledge of how our system is currently
5 operating, I don't believe it would exist
6 anywhere. It was saved on my local hard drive,
7 not on a server.

8 Q. Is there anyone that works at Brown
9 Harris, or consults with Brown Harris Stevens
10 who would have a better idea of whether the
11 photograph is still stored in some way on the
12 server?

13 MR. SAULITIS: Objection to
14 form.

15 A. It is possible that an IT consultant
16 would have an understanding of that.

17 Q. Do any IT consultants' names come to
18 mind that would have knowledge of that?

19 A. Yes, Walfrid Lundborg, W-A-L-F-R-I-D
20 L-U-N-D-B-O-R-G.

21 Q. Was he employed at Brown Harris
22 Stevens at the time that the photograph was
23 originally copied into the blog post?

24 MR. SAULITIS: Objection to
25 form. Employed by?

1 E. DAVIDOWICZ

2 A. Yes, to my knowledge. I am not the
3 technical expert, but that was the intention,
4 and the belief, and purpose of removing it.
5 Not just to be invisible.

6 Q. To your knowledge, has anyone else
7 requested to have a photograph taken down from
8 the Brown Harris Stevens blog?

9 A. No.

10 Q. We are going to look at something
11 that doesn't require a magnifying glass.

12 MR. POTERE: I am going to
13 introduce this as Exhibit 4, and
14 this is what I would categorize as
15 more screen shots from the Brown
16 Harris Stevens website. They bear
17 Bates stamped DDP 000006 through
18 DDP 000015.

19 (Whereupon, screen shots
20 from the Brown Harris Stevens
21 website was marked as Davidowicz
22 Exhibit 4 for identification, as
23 of this date.)

24 MR. SAULITIS: For the
25 benefit of the Witness the code

1 E. DAVIDOWICZ

2 stands for Defendant's document
3 production. In order words, it
4 came from Brown Harris. That code
5 is not part of the document. It
6 was added for the convenience of
7 all of us.

8 THE WITNESS: Okay.

9 Q. Take a moment to flip through those.

10 A. (Perusing.)

11 Q. So are you familiar with the images
12 there portrayed in Exhibit 4?

13 A. Most of them, yes.

14 Q. Can you tell me which ones you are
15 not familiar with?

16 MR. SAULITIS: Objection to
17 form.

18 A. It looks like DDP 14.

19 Q. So you haven't seen that one in the
20 past?

21 A. No.

22 Q. Okay. For the documents -- for the
23 portions of Exhibit 4 that you are familiar
24 with, when have you seen these before?

25 A. Do you mean the originals, or the

1 E. DAVIDOWICZ

2 reproduction of the document?

3 Q. Why don't we start with the
4 originals.

5 A. Well, whenever -- since I work in
6 the marketing department I am familiar with our
7 website and most of its contents, so I couldn't
8 say when I've seen any individual item, but it
9 is familiar to me because of my work with the
10 website.

11 Q. Okay. So does this appear to be
12 screen shots taken off the Brown Harris Stevens
13 website? When I say "this" I mean everything
14 except for the exhibit you pointed out, which is
15 ending in 14.

16 A. Yes, I believe so. At the time, I
17 should say at least. These wouldn't be
18 accurate screen shots taken today, for
19 instance.

20 Q. I understand. So what is "the Talk
21 of the Town?" I've seen that listed on the
22 first page, DDP 000006, and it is referenced
23 throughout the exhibit.

24 A. Right. "Talk of the Town" was the
25 nickname, or name of the blog itself that was

1 E. DAVIDOWICZ

2 part of Brown Harris Stevens.

3 Q. If you can just refer back to
4 Exhibit 3 for just a moment. Was Exhibit 3,
5 which is the blog post containing the photograph
6 of Lisa Corson, was that included in the blog,
7 "the Talk of the Town?"

8 A. Yes, it is.

9 Q. All right. So when was the, I am
10 going to refer to "the Talk of the Town" as "the
11 blog" going forward just to make it easier for
12 everyone?

13 A. Sure.

14 Q. When was "the blog" first created?

15 A. I believe it was in the first half
16 of 2013.

17 Q. 2013. Who was primarily responsible
18 for creating the blog?

19 A. It wasn't a single person. At the
20 time we were redesigning the entire website,
21 and by "we" I mean Sia Comnas, the previous
22 senior managing director, Ed Rialey (phonetic)
23 at the time, myself, and Walfrid Lundborg.

24 Q. Who was responsible for inserting
25 the content into the blog starting back in 2013?

1 E. DAVIDOWICZ

2 If there is more than one individual, you can
3 list those individuals. What I mean by that,
4 just to clarify, the person that was physically
5 taking the articles, and pasting them into the
6 blog space?

7 A. I was.

8 Q. Was anyone else responsible for the
9 physical activity of taking articles, and
10 putting them into the blog?

11 A. No.

12 Q. So if you look at the first page
13 here, DDP 000006, that blog post is dated
14 December 31, 2015. Do you see that?

15 A. Yes.

16 Q. Is that the last blog that was
17 posted to "the Talk of the Town," is that the
18 last blog post that was posted to "the Talk of
19 the Town" blog?

20 A. I don't know. I don't recall. It
21 certainly could be.

22 Q. Are you still to this day posting
23 new blogs to "the Talk of the Town?"

24 A. No, we are not.

25 Q. Why did you stop posting blogs to

1 E. DAVIDOWICZ

2 information that you told her about the lawsuit?

3 MR. SAULITIS: Objection to
4 form.

5 A. I am sure she said something, but
6 honestly I can't recall. I don't think it was
7 very much. It was just she wanted information
8 about what it pertained to. Beyond that, I
9 believe she thought that it was going to be a
10 matter handled by Counsel.

11 Q. So the decision to stop the blog was
12 entirely left to you, and no one told you to
13 stop making blog posts; is that correct?

14 MR. SAULITIS: Objection to
15 form.

16 A. It was my suggestion to do so, and
17 my manager approved of that. But it was my
18 initial decision or suggestion to do so.

19 Q. I understand. You said part of the
20 reason for deciding not to continue updating the
21 blog was the fact that it wasn't serving its
22 purpose, which was to drive traffic to the
23 website; is that correct?

24 A. Yes.

25 Q. And so when you say "traffic," what

1 E. DAVIDOWICZ

2 do you mean by "traffic?"

3 A. What users -- obviously as a website
4 we want people, the users, to come to our site
5 as frequently as possible, not just on a one
6 time basis. Part of the original thinking was
7 that if we included more content on the
8 website, we might invite people to return to
9 the site. Over time, when looking at which
10 pages people were visiting, the blog was not
11 one of the highly ranked pages that people were
12 visiting.

13 Q. Did you advertise the blog, did
14 Brown Harris Stevens advertise the blog in any
15 way, shape, or form?

16 A. No, we never had.

17 Q. Were there ever any paid
18 advertisements posted in connection with the
19 blog?

20 A. No.

21 Q. Did you receive any advertising
22 revenue at all with regards to the blog itself?

23 A. No.

24 Q. Can you take a look at same exhibit,
25 Exhibit 4, DDP 000011.

1 E. DAVIDOWICZ

2 A. (Witness complies.)

3 Q. If you look at what I believe to be
4 an advertisements on the right-hand side that
5 says "Hamptonsbuilders.com." Who paid for that
6 to be there?

7 A. No one. It is not a paid
8 advertisement. We, Brown Harris Stevens, owned
9 Hamptonsbuilders.com. It has a website that we
10 maintain and develop to advertise solely houses
11 that are listed with Brown Harris Stevens.

12 Q. I see. Was part of placing that
13 next to "the Talk of the Town" blog to promote
14 that particular service?

15 A. Its position was not relevant to
16 "the Talk of the Town." It was more relevant
17 to the navigation on the right side of the
18 page.

19 Q. So I understand that the blog is not
20 currently being maintained. Do you know what
21 the budget for the blog was being maintained?

22 A. There was no specific budget set
23 aside for any particular part of the website
24 including the blog.

25 Q. Were there any costs, besides your

1 E. DAVIDOWICZ

2 own salary, associated with maintaining the
3 blog?

4 A. No.

5 MR. SAULITIS: Objection to
6 form.

7 A. Not that I am aware of.

8 Q. Was one of the goals of maintaining
9 the blog to grow the Brown Harris brand?

10 A. I think that's fair to say. It is
11 part of the overall, all marketing and
12 advertising is with that in mind.

13 Q. So you wanted to generate business
14 with the blog; is that correct?

15 A. No, not necessarily. I think that's
16 a little too direct of a relationship. A brand
17 is more of an awareness, and recognizability of
18 a company, or a name. We weren't -- the
19 website itself, in real estate we are not
20 selling items directly on the website. It is
21 not like a retail store. So in that sense we
22 are not thinking as to generate business that
23 way, but to generate interest in the company,
24 or awareness in the company.

25 Q. Were you hoping to gain future

1 E. DAVIDOWICZ

2 clients by creating the blog?

3 MR. SAULITIS: Objection to
4 form.

5 A. Again, that wasn't the thinking in
6 terms of a direct relationship in that sense.
7 Again, we were looking to, in a competitive
8 market, increase interest in visitors visiting
9 our website.

10 Q. Did you use social media to
11 distribute blog posts to help promote them on
12 the website?

13 A. Not all of them, but certain
14 specific ones

15 Q. What social media outlets did use?

16 A. We would usually Twitter, Facebook,
17 and Google Plus.

18 Q. Did you pay any money to enhance
19 those posts so they would go out to a broader
20 market than otherwise would have occurred had
21 you just posted them to the social media?

22 A. No, we have not done that.

23 Q. How did you measure the
24 effectiveness of the blog in terms of generating
25 traffic?

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2 have an interactive form. We don't have
3 comments or feedback from users. So to my
4 knowledge there isn't any information collected
5 in that sense.

6 Q. I understand. What was the purpose
7 of posting the specific article in question,
8 which was represented as Exhibit 2, which was
9 then copied and pasted into the blog post, which
10 is Exhibit 3?

11 A. It is difficult to specify the exact
12 interest. But we are a real estate firm, so we
13 were always looking for items that might
14 pertain to real estate, and we are in the
15 luxury market. This particular article was
16 about the very high end of the market, spec
17 homes \$100 million, so I think I just thought
18 that there was a connection, or correlation
19 between what we were doing and potential
20 audience for an article like that.

21 Q. You mentioned earlier the program
22 you used to post the blogs, it sort of prevents
23 you from posting credits to specific photographs
24 that are posted on the blog; is that correct?

25 MR. SAULITIS: Objection to

1 E. DAVIDOWICZ

2 form.

3 A. Yes, I believe that to be the case.
4 I am not the designer of it, but from my use of
5 the program, that is my understanding of it.

6 MR. POTERE: I am going to
7 enter two exhibits. The first one
8 is an article, or rather a blog
9 post to "the Talk of the Town"
10 blog. It is entitled "Green Roof
11 Options Renovated Ideas From
12 Architecture Digest." The date is
13 November 3, 2016.

14 (Whereupon, blog post "Green
15 Roof Options Renovated Ideas From
16 Architecture Digest," was marked
17 as Davidowicz Exhibit 5 for
18 identification, as of this date.)

19 MR. POTERE: Exhibit 6 is
20 going to be an article taken from
21 the Architectural Digest website,
22 and the name of the article is
23 "Green Roof Options Renovating
24 Ideas." The date of the article
25 is July 31, 2015. And the date at

1 E. DAVIDOWICZ

2 the bottom of the front page of
3 the article is November 3, 2016.

4 (Whereupon, Architectural
5 Digest article "Green Roof Options
6 Renovating Ideas," was marked as
7 Davidowicz Exhibit 6 for
8 identification, as of this date.)

9 Q. Can you take a moment to look at
10 Exhibit 5 and Exhibit 6.

11 A. (Perusing.)

12 Q. So let's start with Exhibit 5. Do
13 you recognize this blog post?

14 A. I recognize it as a blog post. I
15 don't particularly recall this specifically.

16 Q. But you recognize it as a blog post
17 that was posted to "the Talk of the Town?"

18 A. I do.

19 Q. Turning to Exhibit 6, do you
20 recognize this article in Architectural Digest?
21 To be clear, when I say "recognize," I am
22 talking about just the content, not the physical
23 reproduction of the document?

24 A. Certainly, yes.

25 Q. You do recognize this article?

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2 A. In conjunction with the blog post I
3 do.

4 Q. Okay. So if you look at the blog
5 post, which is Exhibit 5, and if you look at the
6 photograph there, do you see any photograph
7 credit on the photograph used in the blog post?

8 A. No, I do not.

9 Q. Okay. If you look at Exhibit 6,
10 which is the Architectural Digest article
11 itself, do you see the photograph credit under
12 that article?

13 A. I do.

14 Q. Do you as an individual know why the
15 photograph credit in Exhibit 6 was not added to
16 the photograph used in the blog post in
17 Exhibit 5?

18 A. As I mentioned, I believe it was not
19 included because of the structure of the blog
20 itself, and we were linking directly to the
21 original source of the article which contained
22 the photograph, and all subsequent credits that
23 it was not done, it wasn't included.

24 Q. Did you contact Architectural Digest
25 to have permission to use their article?

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2 A. No.

3 Q. Did you contact the original
4 photographer to use the photo in the blog post?

5 A. No.

6 Q. Did you ever give credit to
7 photographers whose photos were used in any of
8 the blog posts that you posted to "the Talk of
9 the Town" blog?

10 A. Not to my recollection, I don't
11 believe so.

12 Q. Did you ever request permission to
13 use any of the articles that were used to create
14 the blogs that are posted to "the Talk of the
15 Town" blog on the Brown Harris Stevens website?

16 A. No.

17 Q. This is going to be a two-part
18 question. Does Brown Harris Stevens have a
19 budget for purchasing content to be displayed
20 anywhere on the Brown Harris Stevens website?

21 A. No.

22 Q. Does Brown Harris Stevens have a
23 budget to purchase any content that was
24 displayed specifically on "the Talk of the Town"
25 blog?

1 E. DAVIDOWICZ

2 A. No.

3 Q. Does Brown Harris Stevens license
4 any intellectual property to be used with the
5 Brown Harris Stevens website?

6 A. I am not sure I understand. Do you
7 mean we purchase licensing?

8 Q. That's correct.

9 A. Not to my knowledge. I can maybe
10 clarify that in terms of property photographs.
11 Not for the blog, but as a company we purchase
12 photographs from professional photographers who
13 are commissioned to photograph properties that
14 are listed with Brown Harris Stevens.

15 Q. Those photographs are subsequently
16 posted to the website in conjunction with
17 properties listed on the website?

18 A. Correct.

19 MR. POTERE: We are going
20 to mark this as Exhibit 7. This
21 is entitled "the Computer Use
22 Policy," and the Bates range is
23 DDP 0000001 through 003.

24 (Whereupon, "the Computer
25 Use Policy" was marked as

1 E. DAVIDOWICZ

2 Davidowicz Exhibit 7 for
3 identification, as of this date.)

4 Q. Please take a look at the document.

5 A. (Perusing.)

6 Q. Have you seen the Computer Use
7 Policy previously?

8 A. I believe so.

9 Q. When was the first time you saw this
10 document?

11 A. That I couldn't say. I have been
12 with the company for many years. It was
13 probably a while ago.

14 Q. Who drafted this policy?

15 A. I don't know.

16 Q. Who would know who drafted this
17 policy?

18 A. I believe someone at Tara Holdings
19 would know. This was a document that wasn't
20 created locally at Brown Harris Stevens of the
21 Hamptons. It originated from the New York City
22 office.

23 Q. How do you know that?

24 A. Because one, the language saying
25 that Tara Holdings Group of Affiliated

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2 Companies in the beginning, and the document
3 itself, I know in looking at it, wasn't
4 something that was created locally in our
5 company, in particular, the way it refers to
6 the company itself.

7 Q. Do you know when this document was
8 adopted?

9 A. I do not.

10 Q. Do you know if there are other
11 versions of this document available?

12 A. That I don't know.

13 Q. Do you know what the purpose of this
14 document was, or is?

15 A. Well, I can't say what someone
16 else's intent was, but as a policy document to
17 inform staff members and agents involved with
18 the company as to the policies of the company.

19 Q. Did you see this document in
20 preparation for the deposition today?

21 A. I did not.

22 Q. Does the computer use policy apply
23 to all Brown Harris Stevens employees?

24 A. I would believe so, but I couldn't
25 say for certain. I don't see why it would not.

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2 instance, this particular specific policy, but
3 that was my understanding.

4 Q. Without divulging the contents of
5 conversation that you had, have you ever spoken
6 to anyone within Brown Harris Stevens including
7 general counsel about copyright infringement
8 issues?

9 MR. SAULITIS: Objection.
10 That is going to be impossible to
11 answer without breaking down --

12 MR. POTERE: He can answer
13 whether or not he's communicating
14 with general counsel, that's not
15 privileged. He just can't reveal
16 the content.

17 MR. SAULITIS: Break it
18 down to lawyer category first, and
19 then --

20 MR. POTERE: Sure, I can
21 clarify that.

22 MR. SAULITIS: -- anyone
23 else will be fair game.

24 Q. Did you ever speak to general
25 counsel within Brown Harris Stevens or the

1 E. DAVIDOWICZ

2 parent corporation about copyright issues in
3 general?

4 A. Yes, after receipt of the Complaint.

5 Q. So prior to receiving the Lisa
6 Corson Complaint, did you ever speak with
7 general counsel at Brown Harris Stevens or the
8 parent corporation?

9 A. No.

10 Q. Did you speak to anyone else at
11 Brown Harris Stevens about copyright related
12 issues?

13 A. No.

14 Q. Does Brown Harris Stevens have any
15 other policy that you are aware of that deal
16 with intellectual property issues including a
17 potential copyright infringement?

18 A. Not that I am aware of.

19 (Whereupon, a short break
20 was taken at this time.)

21 MR. POTERE: I am going to
22 mark this as Exhibit 8. This is
23 the Halstead Property Social Media
24 Policy and Guidelines. It is
25 D000024 through 29.

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2 the current lawsuit in which Brown Harris
3 Stevens had been sued for copyright or trademark
4 infringement?

5 A. Not that I am aware of.

6 Q. Are there any lawsuits where Brown
7 Harris Stevens has sued anyone else for
8 copyright or trademark infringement that you are
9 aware of?

10 A. Not that I am aware of.

11 Q. Do you know if your attorney present
12 today is on retainer with Brown Harris Stevens?

13 A. I believe so.

14 Q. What is your basis for that belief?

15 A. I believe that he informed me of
16 that.

17 Q. Do you know when he went onto
18 retainer with Brown Harris Stevens?

19 A. I do not.

20 Q. Can we turn back to Exhibit 3 for a
21 moment. You testified previously that the
22 system you were using prevented you from
23 inserting a photographer's credit into the
24 photograph, or next to the photograph that you
25 used in the blog post; is that correct?

1 E. DAVIDOWICZ

2 MR. SAULITIS: Objection to
3 form.

4 Q. Can you repeat for the record why
5 you chose not to include credit for the
6 photographer in the blog post?

7 MR. SAULITIS: Objection to
8 form.

9 MR. POTERE: It is okay, I
10 understand your objection.

11 A. Several different reasons. As I
12 stated, we provided a direct link back to the
13 source material, and so I didn't necessarily
14 feel it was necessary to do so on the blog.
15 But the structure of the blog itself, again, to
16 my understanding of how it operates, and my use
17 of it didn't allow for a credit line to
18 function within that format.

19 Q. Did you ever inquire from any
20 individual who had responsibility for
21 maintaining the program that you are using, or
22 provide some sort of support for it whether it
23 was possible to add a photo credit?

24 A. I don't recall doing so.

25 MR. POTERE: This is going

1 E. DAVIDOWICZ
2 to be marked as Exhibit 12. It is
3 a letter from Babette Krolik to
4 Steven Crowley. The Bates stamp
5 is LOC 000005. The e-mail is
6 dated January 5, 2016.

7 (Whereupon, letter from
8 Babette Krolik to Steven Crowley
9 was marked as Davidowicz Exhibit
10 12 for identification, as of this
11 date.)

12 Q. Have you had an opportunity to
13 review the exhibit in question?

14 A. Yes.

15 Q. Have you seen this exhibit prior to
16 today?

17 A. Yes, and the date it was sent, I
18 believe.

19 Q. Were you copied on this e-mail?

20 A. Yes.

21 Q. And so that's your e-mail address in
22 the CC?

23 A. Yes, the EDavidowicz.

24 Q. So I am going to read the following
25 sentence in the record, it occurred in the

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C E R T I F I C A T E

I, ILYSA A. LINZER, a Shorthand Reporter
and Notary Public of the State of New York, do
hereby certify:

That, ERIK DAVIDOWICZ, the Witness whose
examination is hereinbefore set forth, was duly
sworn, and that such examination is a true
record of the testimony given by such
Witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage; and that I am in no way interested
in the outcome of this matter.

ILYSA A. LINZER

  
NOVEMBER 13, 2016